



# TITLE IX TRAINING K-12 DISTRICTS

Organization of Self-Insured Schools

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SESSION ONE

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# Outline

- ▶ Overview of Title IX
  - ▶ Court decisions
  - ▶ Regulations and regulatory guidance
  - ▶ New Rules on Title IX (effective 8/14/20)
- ▶ Federal law
- ▶ California Education Code
- ▶ Responsibilities of Title IX Coordinator
- ▶ Role of employees in Title IX enforcement

# Title IX



- ▶ No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
- ▶ Enforced through the Department of Education, Office for Civil Rights (OCR)
  - ▶ Conducts investigations of complaints
  - ▶ Issues regulatory guidance
  - ▶ Enters into Resolution Agreements with educational institutions

# Title IX Introduction

# Title IX Timeline

1999

Supreme Court decisions  
on Title IX

2011, 2014, 2016

Guidance from OCR under  
Obama administration  
(rescinded)

2015

Title IX Coordinator (in effect)

2001

Regulations on Title IX

May 2020

Final Rules on Title IX  
(effective 8/14/20)

# 2001 Guidelines

- ▶ Take prompt and effective action, reasonably calculated to end the harassment, prevent recurrence, and remedy the effects
- ▶ Must address protection from retaliation
- ▶ Provide for prompt and equitable resolution of complaints of discrimination on the basis of sex
- ▶ Have a policy/grievance procedures that provide effective means for preventing and responding to sexual harassment
- ▶ At least one coordinator
- ▶ Training on handling complaints, how to recognize harassment, how to respond, how to report

# Rescinded Guidance

## 2011 Dear Colleague Letter

- ▶ Procedures for sexual violence complaints
- ▶ Standard of Proof
- ▶ Interim measures

## 2014 Questions and Answers on Sexual Violence

- ▶ Detailed some of the enforcement responsibilities for campuses
- ▶ Clarity on 2011

## 2016 Dear Colleague Letter

- ▶ Treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations
- ▶ Student indicated gender and school accepts
- ▶ Facilities available to transgender students

# 2015 Dear Colleague Letter

- ▶ Role of Title IX Coordinator
- ▶ Notice of Non-Discrimination

## EXAMPLE

In compliance with Title IX of the Education Amendments of 1972, **the Palo Alto Unified School District does not discriminate on the basis of sex** in its education programs and activities, in admission practices, or in employment.

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# 2017 Questions and Answers

- ▶ Burden is on school to gather sufficient evidence
- ▶ Interim actions - available to both parties
- ▶ No gag orders - on either party
- ▶ Investigation commences with written notice to Respondent
- ▶ Different decision-makers in the process
- ▶ Mediation - neither prohibited nor discouraged
- ▶ Parties get meaningful access to information
- ▶ Appeal can be offered only to the sanctioned student

# Final Regulations under Title IX (2020) effective 8/14/20

- ▶ Defines sexual harassment
- ▶ Details a school's obligation upon notice of sexual harassment
  - ▶ When a school must respond to allegations of sexual harassment, when it must dismiss, and when it may respond
- ▶ Identifies when supportive measures are required for the parties
- ▶ Explains a proper grievance and investigation process, including appeals
- ▶ Provides standard of proof options
- ▶ Identifies types of training required for school administrators

# Supportive Measures

- ▶ Upon actual knowledge of sexual harassment, a school must offer supportive measures to a complainant
- ▶ Upon filing of a formal complaint, a school must offer supportive measures to respondent
- ▶ Supportive measures are individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party
  - ▶ Designed to restore or preserve a person's equal access to education
- ▶ No disciplinary measures can be taken until investigation is complete
- ▶ Interim removal is a possibility if:
  - ▶ An individual assessment of the immediate threat to physical health or safety of any other student based on the sexual harassment allegations is made, and
  - ▶ Respondent is given the chance for immediate challenge to decision after removal

# Investigate Allegations of Sexual Harassment

- ▶ Preliminary investigation if complainant is unknown
- ▶ Formal complaint from complainant triggers responsibility to investigate allegations
  - ▶ Documented complaint signed by complainant or Title IX Coordinator
  - ▶ Alleging sexual harassment and asking school to investigate
- ▶ Informal resolution possible after the formal complaint has been filed
  - ▶ Parties know the allegations
  - ▶ Informal process is reviewed
  - ▶ Both parties consent - participation cannot be a condition of continued enrollment
  - ▶ Never available for allegations against an employee



# Dismissal without Investigation

- ▶ A school **must** dismiss if the behavior/allegations:
  - ▶ Would not fit within the definition of sexual harassment
  - ▶ Did not occur in an education program or activity of the school
  - ▶ Did not occur in the United States
  
- ▶ A school **may** dismiss an action if:
  - ▶ Complainant withdraws formal complaint in writing
  - ▶ Respondent is no longer enrolled as a student or employed by school
  - ▶ Circumstances prevent school from gathering evidence that would be sufficient to reach a determination

# Grievance Process Highlights

- ▶ Fair, equitable, without bias or conflict of interest, not reliant upon stereotypes
- ▶ Advisors for the parties are permitted
- ▶ Separate decision-makers in process
  - ▶ Investigator separate from the ultimate decision-maker
- ▶ Standard of evidence - preponderance or clear and convincing
- ▶ Notice of allegations and notice of any Title IX meeting/procedural process
- ▶ Burden on the school to gather evidence
- ▶ Cannot violate any constitutional protections - 1st, 5th, and 14th Amendments
- ▶ Share all information with parties
  - ▶ All parties get access to all evidence and have 10 days to respond before investigation report issued
  - ▶ Investigation report shared and 10 days to respond
- ▶ Final report issued and parties advised of outcomes
- ▶ Appeal allowed for both parties and grounds for appeal are defined in the Final Rules

# Investigation Process - Hearing Panel Option for K-12

- ▶ K-12 may hold live hearings with cross-examinations in their investigations
  - ▶ One party's advisor can cross-examine the other party and witnesses
  - ▶ Same location, directly, orally, in real-time, or virtual
  - ▶ If party does not have advisor, school must provide one
- ▶ At request of either party, the parties can be in separate rooms with technology enabling them to see and hear each other
- ▶ Neither party can be compelled to appear and the decision-maker cannot draw negative inferences from failure to appear
- ▶ Live hearings must be recorded

# Other K-12 Title IX Obligations

- ▶ Prohibition on retaliation
- ▶ Training for all participants in the process
  - ▶ Non-biased
  - ▶ Does not rely on stereotypes
  - ▶ Posted online
- ▶ Retention of records
  - ▶ Formal and informal resolutions
  - ▶ Supportive measures (including in cases where no formal complaint filed)
  - ▶ Training





# Title IX Obligations for K-12 School Districts

## Summary

- ▶ Designate a Title IX Coordinator with responsibility for enforcement
- ▶ Must respond promptly in a manner that is not deliberately indifferent when a school has actual knowledge of sexual harassment in an education program or activity by:
  - ▶ Providing **supportive measures** to complainant (possible victim);
  - ▶ **Investigating** a formal complaint from complainant; and/or
  - ▶ Determining if an investigation is necessary
- ▶ Adopt a **grievance process** that meets specific requirements
  - ▶ No distinction between face-to-face and online programs/activities

# California Education Code

# Legislation

## Title IX

- ▶ “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
- ▶ Department of Education, Office for Civil Rights (OCR) enforces
  - ▶ Regulations
  - ▶ Guidance Documents
  - ▶ Resolution Agreements

## Sex Equity in Education Act

- ▶ “It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted without regard to the sex of the pupil enrolled in these classes and courses.”
- ▶ Article 4 Section 221.5

# Non-Discrimination Statement

## Title IX

- ▶ Must include:
- ▶ (1) a **statement of non-discrimination** that specifies the basis for **non-discrimination**; and
- ▶ (2) identification by name or title, address, and telephone number of the employee or employees responsible for coordinating the compliance efforts.
- ▶ Notice of Nondiscrimination

## CA

- ▶ Name and contact info (email and phone number)
- ▶ Right to file and how to file
- ▶ Responsibilities of district
- ▶ How investigation will be managed and other important details (SOL)
- ▶ How to access Department of Education to file complaint
- ▶ Section 221.61

# Title IX Coordinator

## Federal

- ▶ Coordinate compliance
- ▶ Respond to complaints
- ▶ Monitor outcomes
- ▶ Identify and address any patterns
- ▶ Assess effects on the campus climate
- ▶ Understand and play role in drafting policies and procedures

## CA State

- ▶ Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities
- ▶ Investigation of any complaint communicated to the school alleging its noncompliance or alleging any actions which would be prohibited
- ▶ Notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph

# Employees' Responsibilities

- ▶ Title IX - **ALL** Employees at K-12
  - ▶ Responsible to report sexual harassment or allegations of sexual harassment
- ▶ CA Ed Code - Mandated Reporters
  - ▶ **Mandated reporters** have an individual duty to report known or suspected abuse or neglect relating to children, elders or dependent adults

# Title IX Process

## Title IX

- ▶ Receipt of claim
- ▶ Interim measures
- ▶ Notice of Allegations
- ▶ Interviews
- ▶ Other evidence
- ▶ Factual Conclusion and Report
- ▶ Decision-maker review
- ▶ Letters to parties
- ▶ Discipline
- ▶ Ongoing safety measures
- ▶ Internal Appeal

## Uniform Complaint Process

- ▶ Receipt of claim
- ▶ Formal or informal process
- ▶ Investigation of matter
- ▶ Outcome Letters
- ▶ Appeal to CA Department of Education

# Sanction/Punishment

- ▶ Title IX
  - ▶ Full range of punishments
  - ▶ Suspensions and expulsions permitted depending on the severity of the violation
  - ▶ Return to school environment may not be possible
- ▶ CA Ed Code
  - ▶ Consistent with applicable punishments
  - ▶ Suspensions and expulsions limited
  - ▶ Return after expulsion



# Appeals

- ▶ Title IX
  - ▶ Appeal process defined in policy
  - ▶ Appeal for both parties or just Respondent
  - ▶ Grounds for appeal
- ▶ CA Ed Code
  - ▶ CA Department of Education
  - ▶ Review of file for thoroughness of investigations



# Role of Title IX Coordinator

# Title IX Coordinator Responsibilities - 2015 Dear Colleague Letter

- ▶ Proactive monitoring of the district's compliance
  - ▶ Coordinate compliance
  - ▶ Respond to complaints
- ▶ Visible and accessible
- ▶ Monitor outcomes
  - ▶ Identify and address any patterns
  - ▶ Assess effects on the campus climate
- ▶ Understand and play role in drafting policies and procedures
- ▶ Independence and reporting requirements

# Data Collection for K-12 Schools

- ▶ OCR focused attention on data collecting and reporting for K-12
- ▶ Data Quality Reviews: OCR will conduct Data Quality Reviews of the sexual assault/offenses data submitted by school districts
- ▶ Proposed CRDC Data Collection: collect more detailed data on sexual assault including incidents perpetrated by school staff or school personnel



# Reporting Requirements

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- ▶ Adopt a **grievance process** that meets specific requirements
  - ▶ No distinction between face-to-face and online programs/activities

When any employee learns about sexual harassment, the school is deemed to have actual knowledge and proper steps must be taken to avoid being deliberately indifferent.

**All employees must be trained on how to report information received about sexual harassment to the Title IX Coordinator.**

# Title IX Scenarios



# Title IX Scenario I

- ▶ An administrator receives a request for school transfer from parents who advise that their daughter wants to move to another school because she is experiencing harassment from other kids who are calling her “slut” and “whore”.
- ▶ Is school on notice of a Title IX matter?
- ▶ What are the next steps?

# Title IX Scenario II

- ▶ A student tells a teacher that his friend is not coming to class because a fellow student has been tracking the friend - showing up at his home uninvited, waiting for him after baseball practice, incessantly texting him.
  - ▶ Is school on notice of a Title IX matter?
  - ▶ What are the next steps?

# Title IX Scenario III

- ▶ A school counselor learns that a big party took place over the weekend that included drinking and drug use and has heard from a number of attendees that one student may have been sexually assaulted.
  - ▶ Is school on notice of a Title IX matter?
  - ▶ What are the next steps?

# The Implications of Employee Notice

- ▶ If an employee in a K-12 school has notice of sexual harassment and/or allegations of sexual harassment, it must be reported to the Title IX Coordinator to assess the next steps
- ▶ When an employee learns of a potential Title IX matter, the school and the district are deemed to have notice of the matter
- ▶ Failure to report could result in the district being found to be “deliberately indifferent” and thus liable under Title IX



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